1996

Paula Jean Wright, State of Utah v. Johnny Frank Wright : Brief of Appellee

Utah Court of Appeals

Willard R. Bishop; Attorney for Defendant-Appellee.
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IN THE UTAH COURT OF APPEALS

PAULA JEAN WRIGHT, and the STATE OF UTAH, by and through Utah State Department of Social Services, Plaintiff and Appellant, vs. JOHNNY FRANK WRIGHT, Defendant and Appellee.	Case No. 960367-CA Trial Court No. 904500236 Honorable James L. Shumate Priority No. 4

BRIEF OF APPELLEE JOHNNY FRANK WRIGHT

APPEAL FROM ORDERS ENTERED APRIL 23, 1996 AND JUNE 7, 1996
IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

HONORABLE JAMES L. SHUMATE
DISTRICT COURT JUDGE

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction over this matter pursuant to Utah Code Ann. Sec. 78-2a-3(2)(h) (1953, as amended).

NATURE OF PROCEEDINGS

The Plaintiff has appealed an order by the Fifth District Court, Washington County, State of Utah striking answer to "Petition to Modify Decree of Divorce", and striking "Counter-Petition, and Granting Judgment in Favor of Defendant" and an "Order Denying Plaintiff's Motion for Relief from Order and Judgment", and "Plaintiff's Motion for Stay".

STATEMENT OF THE ISSUES

1. Did the Trial Court act properly in striking Appellant Wright's pleadings, and entering a Default Judgment against Appellant Paula Jean Wright?

2. Did Appellant Paula Jean Wright's failure to argue abuse of discretion with respect to Appellant Paula Jean Wright's "Motion for Relief From Order and Judgment" preclude an appeal on the basis of abuse of discretion as to the sanction of striking Appellant Paula Jean Wright's pleadings, and entering a Default Judgment against Appellant Paula Jean Wright?

3. Did the trial Court properly deny Appellant Paula Jean Wright's "Motion for Relief from Order and Judgment"?

4. May Appellant Paula Jean Wright raise issues for the first time on appeal?

STANDARD OF REVIEW

Two issues before the Court center on whether the Trial Court acted properly in striking Plaintiff Paula Jean Wright's pleadings and entering a default judgment against Plaintiff Paula Jean Wright, and acted properly in denying Plaintiff Paula Jean Wright's "Motion for Relief from Order and Judgment". When reviewing child custody proceeding, substantial deference is given to the Trial Court's findings and the Court's actions are not to be disturbed unless the evidence clearly preponderates to the contrary or there has been an abuse of discretion. Woodward v. Woodward, 709 P.2d 393, 394 (Utah 1985). The remaining issue is whether Plaintiff Paula Jean Wright may raise an issue for the first time on appeal. This issue raises a question of law. Questions of law are reviewed under a correctness of error standard, giving no deference to the Trial Court. Hales v. Industrial Com'n of Utah, 854 P.2d 537, 539 (Utah App. 1993); Velarde v. Bd. of Review of Indus. Com'n, 831 P.2d 123, 125 (Utah App. 1992); Jeschke v. Willis, 811 P.2d 202, 203 (Utah App. 1991).

DETERMINATIVE CONSTITUTION PROVISIONS, STATUTES AND RULES

Rule 37, Utah Rules of Civil Procedure

Rule 60 (b), Utah Rules of Civil Procedure

Rule 60 (b). Relief from judgment or order...

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud etc. On motion sand upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4 (e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment from fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

STATEMENT OF THE CASE

On or about April 23, 1996, the District Court issued its "Order Striking Answer to Petition to Modify Decree of Divorce, Counter-Petition, and for Judgment" on the basis that no opposition to the motion had been filed and Paula Jean Wright failed to respond to discovery propounded by Defendant. On or about May 2, 1996, Paula Jean Wright filed her "Motion for Relief from Judgment and Motion for Stay". On June 7, 1996, the District Court issued its "Order Overruling and Denying Plaintiff's Motion for Relief from Order

and Judgment, and Motion to Stay". Paul Jean Wright appeals both orders of the Trial Court claiming abuse of discretion. Paula Jean Wright now raises arguments never presented to the Trial Court.

STATEMENT OF THE FACTS

1. On or about February 19, 1991, this Court executed a "Decree of Divorce" in this matter. (Record on Appeal p.p. 23-32).

2. On or about June 1993, this Court executed its "Findings of Facts and Conclusions of Law", and a "Judgment Modifying Decree of Divorce and Modifying Order Based on Stipulation". (Record on Appeal p.p. 87-113). This change was required in order to detail Defendant's visitation, with which Paula Jean Wright had been interfering. (Record on Appeal p. 91).

3. On or about August 31, 1995, Defendant filed his "Petition to Modify Decree of Divorce". (Record on Appeal p.p. 181-185).

4. In September of 14995, Plaintiff, acting through her then-attorney, Mr. Michael W. Park, filed a document entitled "Answer to petition to Modify Decree of Divorce". In addition, Plaintiff's attorney filed a "Counter-Petition" seeking increased child support and an award of attorney fees. (Record on Appeal p.p. 188-190).

5. On or about October 19, 1995, in an effort to attempt to determine the factual basis behind Plaintiff's "Answer to Petition to Modify Decree of Divorce" and Plaintiff's "Counter-Petition", Defendant propounded "Defendant's First Set of Discovery Requests to Plaintiff Paula Jean Wright". (Record on Appeal p. 206).

6. On or about the 19th day of October, 1995, Plaintiff submitted "Plaintiff's First Set of Interrogatories and Requests for Production of Documents" to Defendant. (Record on Appeal p.p. 197-198).

7. On or about January 26, 1996, Michael W. Park formally withdrew as counsel for Plaintiff. (Record on Appeal p. 200).

8. On or about January 31, 1996, Defendant, by and through counsel, notified Plaintiff to appoint counsel or represent self. (Record on Appeal p.p. 202-203).

9. On or about April 1, 1996, Defendant filed his "Motion to Strike Answer to Petition to Modify Decree of Divorce" and "Counter-Petition, and for Judgment" and "Memorandum in Support of Motion to Strike Answer to Petition to Modify Decree of Divorce, Counter-Petition and for Judgment". (Record on Appeal p.p. 213-218).

10. On or about April 23, 1996, this Court issued its "Order Striking Answer to Petition to Modify Decree of Divorce, and Striking Counter-Petition", and granting judgment in favor of Defendant. (Record on Appeal p.p. 232-235).

11. On or about April 30, 1996, this Court issued its "Writ of Assistance" to the Sheriff of Salt Lake County to aid Defendant in obtaining physical custody of the parties' minor child. (Record on Appeal p.p. 253-254).

12. On or about May 6, 1996, Plaintiff filed her "Motion for Relief from Judgment and Motion for Stay", and "Memorandum of Points and Authorities in Support of Motion for Relief from Judgment and Motion to Stay". (Record on Appeal p.p. 270-277).

13. Plaintiff has had a history of violating orders of the Trial Court with respect to the minor child. With regard to the Trial Court's "First Modification of the Decree",

partial grounds for the modification as set forth in the "Findings of Fact and Conclusions of Law" are that Plaintiff, Paula Jean Wright, refused to let Defendant visit with Brandi Jean Wright, his daughter, except in her home, under supervision. That requirement instituted by Plaintiff, Paula Jean Wright, is not in accordance with the visitation order that was in effect at the time. Also, the order regarding visitation gave Defendant liberal visitation, yet Plaintiff denied Defendant visitation since May 23, 1995. Further, Plaintiff being fully aware that Defendant had been awarded custody of the minor child, absconded with the child to avoid having to comply with the April 23, 1996 order granting Defendant custody. (Record on Appeal p.p. 297-298).

14. Defendant did not have visitation with the parties' minor child since May 23, 1995 because Plaintiff, in violation of the "Modified Decree of Divorce", denied Defendant visitation. That was one of the factors in facilitation Defendant's "Petition to Modify Decree of Divorce". (Record on Appeal p. 284).

15. In September 1995, Plaintiff, Paula Jean Wright, acting through her then-attorney, Mr. Michael W. Park, filed a document entitled "Answer to Petition to Modify Decree of Divorce", in which Plaintiff denied certain factual allegations made by Johnny Frank Wright. In addition, Plaintiff's attorney filed a "Counter-Petition" seeking increased child support, and an award of attorney fees. (Record on Appeal p.p. 188-190).

16. On or about October 18, 1995, Johnny Frank Wright's attorney wrote to Plaintiff's attorney, and requested Plaintiff's attorney to check his schedule to determine when it might be appropriate to take the deposition of Plaintiff, Paula Jean Wright. (Record on Appeal p.p. 206, 209).

17. On or about October 31, 1995, Johnny Frank Wright's attorney received from Mr. Michael W. Park, a letter inquiring as to whether Mr. Bishop wanted to take Paula Jean Wright's deposition prior to the time she responded to the discovery which had been propounded. (Record on Appeal p.p. 206-207, 210).

18. On or about November 21, 1995, Johnny Frank Wright's attorney, Mr. Willard R. Bishop, wrote to Mr. Park. In that letter, Mr. Bishop informed Mr. Park that he did not want to take the deposition of Plaintiff until such time as Plaintiff responded to the written discovery requests. (Record on Appeal p.p. 207, 211).

19. On January 24, 1996, when no response to the written discovery propounded by Johnny Frank Wright to Paula Jean Wright had been received, Johnny Frank Wright's attorney again wrote to Mr. Park. In that letter, Mr. Bishop requested that Mr. Park take steps to get the discovery responses completed. He also informed Mr. Park that he did not want to provide a response to Plaintiff's discovery until Plaintiff had responded to Defendant's discovery requests, and that Defendant's responses were "just about completed". At the same time, Johnny Frank Wright requested that Mr. Park contact Plaintiff, Paula Jean Wright, and make arrangements for Johnny Frank Wright to visit with his child, not having had the opportunity for some months. (Record on Appeal p.p. 207, 212).

20. Johnny Frank Wright's "Response to Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant" was completed and for some time has been placed with Johnny Frank Wright's attorney. The response was not served upon Paula Jean Wright because Paula Jean Wright had failed to respond to Johnny Frank Wright's

discovery request which was submitted to Paula Jean Wright prior to her serving on Johnny Frank Wright her set of discovery requests. (Record on Appeal p. 299).

21. On April 30, 1996, Johnny Frank Wright, with the assistance of Deputy Mitchell of the Salt lake County Sheriff's Office, went to the residence of Paula Jean Wright at 80 West 900 North #35 to take custody of the parties' minor child, Brandi Jean Wright. Neither Plaintiff nor the child were at the home. However, Bryan Magann, the apparent boyfriend of Paula Jean Wright, was at Paula Jean Wright's apartment. Mr. Magann informed Mr. Wright and Officer Mitchell that Plaintiff, Paula Jean Wright, had stated to him that very morning that she had received a copy of the order changing custody to Mr. Wright and that she was going to leave. Mr. Magann thought she probably would run to Provo, Utah to a friend's house. (Record on Appeal p.p. 298, 302).

22. The Honorable James L. Shumate executed and entered his Order overruling and denying Plaintiff/Appellant's "Motion for Relief from Order and Judgment, Motion for Stay, and Request for Expedited Hearing and Decision", on or about June 7, 1996. (Record on Appeal p.p. 317-318).

23. On or about July 1, 1996, Plaintiff/Appellant filed her "Amended Notice of Appeal", to this Court "from the Order Striking Answer to Petition to Modify Decree of Divorce and Striking Counter-Petition and Granting Judgment in Favor of Defendant entered April 23, 1996". (Record on Appeal p. 326).

SUMMARY OF ARGUMENTS

The Trial Court, as the trier of fact, is in the best position to determine the appropriate belief from the evidence presented.

The Appellate Court is to give substantial deference to the Trial Court's findings, and give the Trial Court considerable room in formulating the appropriate relief.

In the case at bar, the Trial Court from the evidence it had before it properly imposed the sanction of striking Paula Jean Wright's "Answer to Petition to Modify Decree of Divorce and Striking Counter-Petition and Granting Judgment in Favor of Defendant".

The Trial Court was also correct in denying Paula Jean Wright's "Motion for Relief from Order and Judgment and Motion for Stay and Request for Expedited Hearing and Decision".

Paul Jean Wright may not raise arguments on appeal which were not presented to the Trial Court.

ARGUMENT

POINT I

PAULA JEAN WRIGHT CANNOT EXPECT EQUITY TO COME TO HER AID WHEN HER CONDUCT HAS BEEN INEQUITABLE.

It is generally accepted that equity refuses to lend its aid to a party whose conduct in inequitable. See Rohr v. Rohr, 709 P.2d 382, 384 (Utah 1985). In Rohr, Mr. Rohr made an effort to remove children from the State of Utah. As a result, the Utah Supreme Court upheld the Trial Count's decision severely restricting his visitation rights, because he was in contempt of Court for failure to pay child support and for attempting to remove the children.

In Baker v. Baker, 224 P.2d 192, 194 (Utah 1950), the Utah Supreme Court stated, at page 194:

> "It is a general rule that a party who is in contempt will not be heard by the Court when he wishes to make a motion or grand a favor, and if a party files a pleading while in contempt, it will be stricken from the file on motion."

That position continues to be good Utah law. In Johnson v. Johnson, 560 P.2d 1132, 1134 (Utah 1977), the Utah Supreme Court again stated, probably quoting from Baker:

> "It is the general rule that a party in contempt will not be heard by the Court when he wishes to make a motion or grant a favor."

In the present case, Plaintiff Paula Jean Wright had a pattern of non-compliance with orders of the Trial Court. With regard to the Trial Court's First Modification of the Decree, partial grounds for the modification, as set forth in the "Findings of Fact and Conclusions of Law" are that Paula Jean Wright refused to let Johnny Frank Wright visit with Brandi Jean Wright, his daughter, except in her home, under supervision. That requirement instituted by Paula Jean Wright, was not in accordance with the visitation order that was in effect at the time. Also, Johnny Frank Wright was given liberal visitation, yet Paula Jean Wright denied Johnny Frank Wright visitation since May 23, 1995. Further, Paula Jean Wright being fully aware that Johnny Frank Wright had been awarded custody of the minor child, absconded with the child to avoid having to comply with the April 23, 1996 order granting Johnny Frank Wright custody.

The Affidavit of Johnny Frank Wright and the Salt Lake County Sheriff's Office initial report of Deputy Mitchell full well show that Paula Jean Wright had actual knowledge of the existence of the "Order Striking Answer to Petition to Modify Decree of Divorce, and Striking Counter Petition and Granting Judgment in Favor of Defendant". Despite that knowledge, she willfully failed and refused to permit Johnny Frank Wright to

take physical custody of his child by fleeing with the child. Johnny Frank Wright finally located mother and child in Provo, Utah through the use of a Private Detective. Once the child was located, Johnny Frank Wright, with the assistance of a law enforcement officer, removed the child from the custody of her mother. Paula Jean Wright was guilty of defiant and blatant contempt of the Trial Court's orders, and is not entitled to privileges as a litigant for that reason.

POINT II

ANY NEGLECT BY PAULA JEAN WRIGHT'S ATTORNEY IS ATTRIBUTABLE TO HER THROUGH THE PRINCIPLES OF AGENCY.

Any neglect by a Defendant's (Plaintiff's) attorney is attributable to Defendant (Plaintiff's) through the principles of agency. Russell v. Martell 681 P.2d 1193, 1195, (Utah 1984).

Paula Jean Wright based her failure to respond to discovery requests on "not hearing anything further from my counsel..." Certainly, Michael W. Park, her then counsel is a competent attorney and appropriately corresponds with his clients. However, even if Mr. Park failed to communicate with his client, any knowledge of the case he might have is imputed to his client.

POINT III

THE TRIAL COURT'S IMPOSITION OF SANCTIONS STRIKING PAULA JEAN WRIGHT'S "ANSWER TO PETITION TO MODIFY DECREE OF DIVORCE AND STRIKING COUNTER-PETITION AND GRANTING JUDGMENT IN FAVOR OF DEFENDANT" WAS APPROPRIATE BECAUSE OF HER WILLFUL FAILURE TO RESPOND TO WRIGHT'S DISCOVERY REQUESTS AND WAS NOT AN ABUSE OF DISCRETION.

URCP 37 provides sanctions for failure to make or cooperate in discovery.

Among other things, the provision of Rule 37 provide for the striking of pleadings, and the entry of judgment by default.

The sanction of default judgment for failure to make discovery is justified where there has been a frustration of the judicial process, that is, where the failure to respond to discovery impedes trial on the merits and makes it impossible to ascertain whether the allegation of a party to whom discovery is propounded, have any factual merit. W.W. & W.B. Gardner, Inc. v. Parkwest Village, Inc., 568 P.2d 734, 738 (Utah 1977).

> "The imposition of sanctions is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion... Imposing sanction for a party's refusal to respond to a court order compelling discovery is a harsh sanction and therefore, requires "a showing of 'willfulness, bad faith or fault' of the part of the non-complying party"..."Willful failure" has been defined as "'any intentional failure as distinguished from involuntary noncompliance. No wrongful intent need be shown.'" "Amica Mut. Ins. Co. v. Shettler, 768 P.2d 950, 961 (Utah App. 1989).
>
> "The general rule is that a party in a civil case who refuses to respond to an order compelling discovery is subject to sanctions pursuant to Utah R.Civ.P. 37(b)(2)(C)... The choice of an appropriate discovery sanction is primarily the responsibility of the trial judge..." Federal Savings and Loan Association v. Schamanek, 684 P.2d 1257, 1266 (Utah 1984).

In the present case, Paula Jean Wright makes several feeble attempts to justify not responding to Johnny Frank Wright's discovery requests. She undertakes to mitigate the grievance of her own failure to respond to Johnny Frank Wright's discovery request by referring to the fact that Johnny Frank Wright had not responded to her discovery requests. The argument is weak, at best. Johnny Frank Wright's discovery requests were submitted to Plaintiff prior to Paula Jean Wright serving on Johnny Frank Wright her discovery

requests. Johnny Frank Wright had completed his response to Paula Jean Wright's discovery requests, but was holding them waiting for Paula Jean Wright to respond first. Paula Jean Wright's counsel was made aware of this fact in the letter from Defendant's counsel, Willard R. Bishop, dated January 24, 1996.

Also, Paula Jean Wright in her Affidavit stated that a reason for her not responding to Johnny Frank Wright's discovery request was that she "obtained from others that Defendant was having difficulty in his current marriage". Such a conclusion is groundless, simple-minded and hardly a foundation upon which to base a conclusion that the case had been "dropped".

Further, Paula Jean Wright was aware of her then attorney, Michael Park's withdrawal from the case in January of 1996. Johnny Frank Wright's counsel also notified Paula Jean Wright in early February that she needed to "Appoint Counsel or Represent Herself". Sticking to her pattern of indifference, disobedience, and complacency in this case, she did nothing with respect to obtaining counsel in this matter until "early April, 1996 when "I received Defendant's Motion to Strike Answer to Petition to Modify Decree of Divorce and for Judgment." Only when the heat was on did she take affirmative steps to obtain counsel, and then it took almost one month thereafter before any counsel ever made an appearance for her in the case. Also, the nature of Johnny Frank Wright's "Motion to Strike Answer to Petition to Modify Decree of Divorce" placed her on notice of the urgency that she have legal representation in this case.

Clearly, Paula Jean Wright's blatant indifference and complacency warranted the Trial Count's sanction of striking "Answer to Petition to Modify Decree of Divorce, and Striking Counter-Petition, and Granting Judgment in Favor of Defendant".

POINT IV

THE TRIAL COURT'S OVERRULING AND DENYING PAULA JEAN WRIGHT'S "MOTION FOR RELIEF FROM JUDGMENT AND MOTION TO STAY" WAS NOT AN ABUSE OF DISCRETION.

Rule 60(b) of the Utah Rules of Civil Procedure reads in pertinent part:

> "...(b) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final-judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;..."

Rule 37 of the Utah Rules of Civil Procedure provides for the striking of pleadings and the entry of judgment by default.

> "The general rule is that a party in a civil case who refuses to respond to an order compelling discovery is subject to sanctions pursuant to Utah R.Civ.P. 37(b)(2)(C)... The choice of an appropriate discovery sanction is primarily the responsibility of the trial judge and will not be reversed absent an abuse of discretion." Federal Savings and Loan Associations, Supra.

In this case, Paula Jean Wright based her grounds for having the default judgment set aside on the fact that she thought the case "had been 'dropped' due to failure of Defendant to answer discovery requests and other reasons and Plaintiff further believed that she had a time to obtain additional counsel before final ruling on the motion".

A review of the conduct of Paula Jean Wright clearly reflects that the Trial Court did not abuse its discretion in denying her Motion for Relief from Judgment.

Paula Jean Wright's then counsel, Michael W. Park, was served with "Defendant's First Set of Discovery Requests to Paula Jean Wright" on or about October 19, 1996.[1] Paula Jean Wright was "personally" provided a copy of the discovery requests by Mr. Park shortly thereafter. (Record on Appeal p. 279). Paula Jean Wright having been made aware of the discovery request did nothing, although as the Trial Court stated:

> "Both of those documents submitted pursuant to the Rules of Civil Procedure have time deadlines on them. The possession of a set of interrogatories, even to a person who is not learned in the practice of law, is on the very face of it an alert that a clock is running." (Record on Appeal p. 350).

As a basis for her belief that the case had been "dropped", Paula Jean Wright also claims that she obtained information "from others that Defendant was having difficulty in his current marriage." (Record on Appeal p. 279). As previously stated, Paula Jean Wright by basing her belief on such a groundless assertion, which is tantamount to simple-mindedness, is hardly a foundation upon which to make a conclusion that the case had been "dropped".

Finally, in late January of 1996, Paula Jean Wright received "Notice of Withdrawal of Counsel" from Mr. Park and shortly thereafter received "Notice to Appoint Counsel or Represent Self". (Record on Appeal p. 279). As was consistent with Paula Jean Wright's indifference and complacency in this case, she did nothing even though the "Notice to Appoint Counsel or Represent Self" says on its face to appoint counsel. (Record on Appeal p.p. 202-203).

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[1] Any knowledge of the discovery request by Michael W. Park would be imputed to Paula Jean Wright.

POINT V

APPELLANT PAULA JEAN WRIGHT MAY NOT RAISE ON APPEAL ISSUES NOT PRESENTED NOR ARGUED TO THE TRIAL COURT.

Plaintiff Paula Jean Wright argues that the Trial Court's entry of default judgment as a sanction for failure to provide discovery was an abuse of discretion. (See Point I of Brief of Appellant).

Defenses and claims not raised in the Trial Court cannot be raised for the first time on appeal. Bangerter v. Poulton, 663 P.2d 100, 102 (Utah 1983). Where there is no indication in the record on appeal that the Trial Court reached or ruled on an issue, the Court of Appeals will not undertake to consider the issue on appeal. Broberg v. Hess, 782 P.2d 198, 201 (Utah App. 1989). The record is void of any indication that Plaintiff ever claimed or argued "abuse of discretion" to the Trial Court. In fact, she never did.

Not having ever presented or made her current arguments to the Trial Judge, the same cannot now be raised for the first time on appeal.

CONCLUSION

For the reasons set forth above, the District Court properly entered its default judgment as a sanction for Plaintiff's failure to provide discovery and properly overruled and denied Plaintiff's "Motion for Relief from Order and Judgment and Motion for Stay". Paula Jean Wright cannot raise arguments for the first time on appeal. Accordingly, this Court should affirm the District Court's decisions, and dismiss the appeal.

RESPECTFULLY SUBMITTED this 6th day of January, 1997.

WILLARD R. BISHOP

CERTIFICATE OF MAILING

I hereby certify that I mailed two (2) full, true and correct copies of the above document to Floyd W. Holm, Esquire, at 965 South Main, Suite 3, P. O. Box 765, Cedar City, UT 84721-0765, by first-class mail, postage prepaid, this 6th day of January, 1997.

WILLARD R. BISHOP

ADDENDUM

arguments why the admissions should not be admitted, and movant's reply to the response all together outlined the respective positions on the question of withdrawal of admissions, and the trial court was fully briefed thereon; it properly treated the various documents as a motion to withdraw the admissions. Brunetti v. Massaro, 684 P.2d 585 (Utah Ct. App. 1983).

Matter of law.

Request for admission of pure matter of law is improper, although a request for an admission of an ultimate fact or application of law to fact is proper. Jensen v. Pioneer Dodge Ctr., Inc., 702 P.2d 96 (Utah 1985).

Motion to dismiss.

—Tolling.

Filing a motion to dismiss did not toll effect of Subdivision (a), which treats requests for admissions which are not answered within 45 days as if admitted and as a proper basis for summary judgment. Schmitt v. Billings, 600 P.2d 516 (Utah 1979).

Privilege against self-incrimination.

Privilege against self-incrimination may be asserted in civil discovery proceedings, including requests for admission; however, to sustain an assertion of the privilege, a party must show that the responses sought to be compelled might be incriminating. First Fed. Sav. & Loan Ass'n v. Schaumack, 684 P.2d 1267 (Utah 1984).

Punitive damages.

Where plaintiff requests an admission of punitive damages in an amount unrelated to actual damages, the court, as a matter of equity, must intervene and examine the admission. Jensen v. Pioneer Dodge Ctr., Inc., 702 P.2d 96 (Utah 1985).

Cited in Utah Sand & Gravel Prods. Corp. v. Salt Lake County Comm'n, 14 Utah 2d 151, 379 P.2d 379 (1963); W.W. & W.B. Gardner, Inc. v. Park W. Village, Inc., 568 P.2d 764 (Utah 1977).

COLLATERAL REFERENCES

Am. Jur. 2d. — 23 Am. Jur. 2d Depositions and Discovery §§ 314 to 325.

C.J.S. — 27 C.J.S. Discovery §§ 86 to 110.

A.L.R. — Continuance sought to secure testimony of absent witness in civil case, admissions to prevent, 15 A.L.R.2d 1372.

Party's duty, under Federal Rule of Civil Procedure 26(a) and similar state statutes and rules, to respond to request for admission of facts not within his personal knowledge, 29 A.L.R.3d 756.

Formal sufficiency of response to request for admissions under state discovery rules, 8 A.L.R.4th 728.

Permissible scope, respecting nature of inquiry, of demand for admissions under modern state civil rules of procedure, 42 A.L.R.4th 693.

Key Numbers. — Discovery ⇐ 121 to 132.

Rule 37. Failure to make or cooperate in discovery; sanctions.

(a) **Motion for order compelling discovery.** A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) **Appropriate court.** An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

(2) **Motion.** If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) **Evasive or incomplete answer.** For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) **Award of expenses of motion.** If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose

conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

(1) Sanctions by court in district where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by court in which action is pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) an order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders *as are listed in Paragraphs (A), (B), and (C) of this subdivision*, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make

the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under Paragraphs (A), (B), and (C) of Subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Failure to participate in the framing of a discovery plan. If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure. (Amended effective Jan. 1, 1987.)

Compiler's Notes. — This rule corresponds to Rule 37, F.R.C.P.

Cross-References. — Contempt generally, § 78-32-1 et seq.

NOTES TO DECISIONS

Analysis

Delay in answering interrogatories.
Expenses on failure to admit.
—Failure to respond to requests.
Failure to comply with order.
—Arrest of party.
——Failure to appear at deposition.
—Arrest of witness.
——Failure to produce documents.
—Discretionary sanctions.
—Dismissal without prejudice.
—Exclusion of evidence.
—Judgment.
——Failure to produce documents.
—Striking of answer.
——Jurisdiction.
Failure to make discovery.
—Court-ordered compliance.
——Belated response.
—Default judgment.
—Delay justified.
—Summary judgment.
——Abuse of discretion.
—Wilfulness.
Order compelling discovery.
—Award of expenses.
Privilege against self-incrimination.
—Attorney fees.

Cited

Delay in answering interrogatories.

Default judgment was proper against plaintiffs in a case that had been pending for years in which the untimeliness of plaintiffs' interrogatory answers effectively prevented defendant from undertaking follow-up discovery. Schoney v. Memorial Estates, Inc., 720 P.2d 584 (Utah Ct. App. 1986), cert. denied, 804 P.2d 1232 (Utah 1990).

Expenses on failure to admit.

—Failure to respond to requests.

This rule applies only to parties who unjustifiably fail to admit facts but who nevertheless have responded to the request; by failing to respond at all, the facts are admitted under Subdivision (a), and Subdivision (c) does not apply. Schmitt v. Billings, 600 P.2d 516 (Utah 1979).

Failure to comply with order.

—Arrest of party.

——Failure to appear at deposition.

Issuance of bench warrant for arrest of a party for failure to appear at a deposition is a matter within sound discretion of trial court, and its action will not be tampered with on appeal unless arbitrary, capricious, or a clear

904500236

IN THE FIFTH DISTRICT - St. George COURT

WASHINGTON COUNTY, STATE OF UTAH

ORIGINAL

WRIGHT, PAULA JEAN, Plaintiff, vs. WRIGHT, JOHNNY FRANK, Defendant.	Case No. 904500236 DA

REPORTER'S TRANSCRIPT OF VIDEO TAPE

BEFORE THE HONORABLE JAMES L. SHUMATE

Wednesday, May 15, 1996

APPEARANCES:

For the Plaintiff: Floyd W. Holm, Esq.

For the Defendant: Willard R. Bishop, Esq.

Reported by: J. Elizabeth Van Fleet, RPR, CSR

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ST. GEORGE, WASH. CO., UT., WED., MAY 15, 1996

3:42 p.m.

-oOo-

P R O C E E D I N G S

THE COURT: We are back in session, May 15, '96. The hour is 3:42. Matter before the Court is State and Wright versus Wright. Mr. Bishop for the defendant, John Frank Wright. Mr. Holm for Paula Jean Wright. Mr. Graf is not participating in these proceedings. You are not --

MR. GRAF: (Inaudible.)

THE COURT: All right. Mr. Graf is here, but we won't need his help in the matter. Mr. Holm, this is your motion for relief from judgment and a motion for stay of the orders previously entered by the Court. What do you want to add that's not already in the file?

MR. HOLM: Well, not too much, Your Honor, frankly. I have a memorandum -- reviewed the memorandum. The motion for stay --

MR. BISHOP: Is moot.

MR. HOLM: -- is somewhat moot, Your Honor, depending on -- unless, of course, you take the other motion under advisement, then, of course,

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we would still ask for a stay.

THE COURT: The custody of the child has been transferred, counsel?

MR. HOLM: It has.

MR. BISHOP: On the 4th of May about 11:30 p.m. with the assistance of an officer, custody was transferred.

THE COURT: All right. Go ahead, then, Mr. Holm.

MR. HOLM: Thank you, Your Honor. With regard to the other motion, the motion for relief from the judgment, I want to point out to the Court that this is not the same thing necessarily as a motion to set aside a default judgment. A default judgment has, in fact, been entered, but the basis for your default judgment in this case is because my client, Ms. -- now Tisdell, but formerly Wright -- failed to respond to discovery.

Discovery was propounded back in October, and there's a statement of facts that outlines that to some extent. She did not answer that discovery. Her initial attorney withdrew from the case. She, for one reason or another, whether incorrectly or correctly, and I know counsel is going to say that she had no basis for believing this, but for

whatever reason, she believed that the case was resolved. There's some dispute in the affidavits, but I don't think you need to resolve that dispute necessarily in this situation.

She believed that the situation had been dropped so to speak by her ex-husband and simply did not pursue the matter until she was served with the motion for entry of striking her -- her answer and counterpetition and basically for sanctions pursuant to Rule 37.

And she attempted to locate an attorney during the month of April, finally was able to retain me. By the time she had retained me as her counsel in late April, Your Honor had already entered the judgment and order that we're requesting relief from.

The case law outlined in my memorandum that counsel has relied upon in his initial motion is the W.W. and W.B. Gardener versus Park West Village. That case does allow that you can take the extreme sanction of default judgment if discovery has not been responded to. Even --

THE COURT: Counsel, let me ask you this.

MR. HOLM: Okay.

THE COURT: If there has not been

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visitation with the child for in excess of one year, isn't that grounds for some extremity?

MR. HOLM: I would agree with you if that, in fact, is the case. We dispute that. We don't dispute that the visitation has occurred -- or has not occurred, but there are some extenuating circumstances, which frankly we're not prepared to go into today, that we believe should be taken into account before you impose sanctions with regard to that. But I think that's separate from the issue that you're being asked to consider today.

Yes, we're -- we're simply asking you get this case reopened so we can revisit that issue and whatever other issues have been raised by the pleadings in this case, and that's all we're asking for.

We're not -- you know, I don't think that it's an appropriate sanction necessarily under these circumstances that you have before you in the affidavit of Ms. Tisdell to simply default her and grant a default judgment in favor of the defendant. That's the -- that's the question we're asking you to resolve today.

THE COURT: I follow you, counsel.

MR. HOLM: Okay. And, of course, that's

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-- that's a sanction -- that's the most harsh sanction that you can give under Rule 37, and ordinarily, that's not a sanction you should meet out until after there have been orders requiring her to compel -- compelling her to comply with discovery. Now, that's not what the W.W. and W.B. Gardener case says --

MR. BISHOP: Right.

MR. HOLM: -- but the circumstances of that case are not the same as the circumstances here I don't believe. Plus you have the Barrington versus Wade case, which says, number one, that's an unusually harsh sanction. You should meet it out with great caution.

That was the case and a situation where the court -- trial court had refused and did not grant the sanction of dismissal of the case -- or dismissal of the counterclaim striking the answer of default judgment even after numerous orders for compelling discovery and so on had been entered.

That isn't the case here, and by the way, in the Barrington case, the court of appeals says that was not the discretion for the Court not to enter the sanction of default judgment in that case. Well, that isn't the case here. We have a

situation where discovery was pending, and by the way, she had discovery pending, too. It followed the discovery that the petitioner here in this case filed.

THE COURT: Counsel, why didn't she respond to the notice to appoint successive counsel?

MR. HOLM: She thought, as she says in her affidavit, that the case had been more or less dropped. It was only upon receipt of the motion that counsel -- there was quite an apparent matter that was going to go forward that she determined, yes, I better do something about this and get me some counsel, which she immediately took steps to do, but unfortunately was not able to accomplish until after you had already entered your order.

THE COURT: All right. Anything else?

MR. HOLM: Nothing further, Your Honor.

THE COURT: Mr. Bishop, in response.

MR. BISHOP: Yes, Your Honor. I would like to take the Court and counsel through some time periods. The original decree was entered in February of 1991, gave Mr. Wright reasonable rights of visitation, no specificity, just the standard reasonable rights of visitation.

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She attempted to interfere with that visitation, tried to impose terms on it that were not there, like you can only see the child in my presence and that sort of thing. We had to come back in at that time on a petition to modify, and we modified the decree at that time to give specific visitation to try to pin her down so that we wouldn't have any more problems.

She continued that pattern. That brought us to August, I believe it was, of 1995 when we filed a petition to modify the decree of divorce. We propounded discovery on the 19th of October of 1995. Six days later, Mr. Park, her then attorney, on the 25th of October, wrote a letter to me indicating that he had received the discovery and wanting to know basically whether I wanted to depose her before or after he had responded to the written discovery.

On the 21st of November, 27 days later, I responded and said I want her to answer the written discovery and then we'll take her deposition. That was when her discovery was due, right about then, in November. That's the third written notice of an obligation to complete discovery.

On the 24th of January, 64 days after the

November communication, I requested discovery responses from Mr. Park. Now, that's the fourth written notice, if you include the discovery document itself. Mr. Park then withdrew apparently because he didn't have any communication with her, and she was not responding. At least -- that's speculation on my part, but that's what it appears to be. She hadn't responded and so he withdrew.

Six days later the notice to appoint counsel went out on the 30th of January of 1996. She did nothing. 59 days later the motion to strike after a judgment was filed. 22 days later the notice to submit was given. The order was signed three days later on the 23rd of April. On the 26th of April notice of execution and filing was sent out, served to her. She apparently got that and took off to try to avoid the enforcement of the orders of this Court.

On the 1st of May -- (inaudible) -- assistance was issued. On the 2nd of May she filed her pending motion. That's 197 days from the time the discovery was put down. She had ample opportunity, at least four written notices to do something about it before Mr. Park got out of the case.

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THE COURT: Counsel, I believe you have given me a chronology where the longest gap was a total of 57 days between actions in the file.

MR. BISHOP: There's one of 64 days.

THE COURT: 64 days. All right.

MR. BISHOP: On the 21st of November to the 24th of January. There were 59 days between the notice to appoint counsel and the motion to strike.

THE COURT: All right.

MR. BISHOP: I mean, well in excess of the 20 days that the law allows to get the time. All along she has had more than the minimum times given to her and the opportunity to do something about it.

As Mr. Holm states, the motion to stay execution is moot. The child has been with her father. She's enrolled in school, doing very well. We don't think that Ms. Wright, or now Tisdell, even as before this Court appropriately, we think because of what is shown in the file, with her constant interference with visitation in one form or the another and running with the child and the hiding when she knew she should have turned the child over, that she's guilty of contempt of court and therefore not entitled to the privileges as a litigant.

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As we see it, she makes the comment, I think, somewhere, I'm not sure whether it's a memo or a motion itself, that she didn't have any communication with Mr. Park. I don't believe that's so, but even if it were so, she's chargeable with the acts of her attorney. That's just standard law. Mr. Park was diligent as far as I can see.

The talk that Mr. Holm also mentions about the sanction that was imposed, we believe it was entirely appropriate under these circumstances given the apparent misconduct that she has had over the years. But to top it all off, if you look at the case law, if you're going to contest that type of particular sanction under Rule 37, you have to allege and prove an abuse of discretion. Now that hasn't even been alleged in their motion or in their affidavit. There was nothing that would intend to show a use of discretion on the part of the Court. The sanction is entirely appropriate.

The idea that Mr. Wright was having difficulty in his marriage that she raises she said she heard some people say it. That's risible. It didn't happen. The idea that -- oh, the case had been dropped, that also is not supportable by any objective standard. It sounds a little bit to me

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like a case of denial. She wanted it to be dropped so as far as she was concerned it was dropped, although that wasn't, in fact, the case.

The Court shouldn't reward her contumacious conduct. As a matter of fact, now that the child is back, I can assure the Court that we'll probably be back in seeking an award of costs for what it took to recover the child. That's something, though, that's not before the Court right now. But the Court simply should not award the type of conduct that she has carried out over the years since the entry of the decree of the divorce by granting her motion.

THE COURT: Thank you, counsel. Mr. Holm, you're the moving party, you have the last opportunity.

MR. HOLM: Thank you, Your Honor. I -- I take some exception to some of the things that counsel has said because it's simply not before the Court -- appropriately before the Court. That's what we have here. That's why we take evidence. That's why we hear from the parties. That's the very reason we would like to have this thing set aside so that you can have an opportunity to hear this matter on the merits.

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To simply take as fact statements made -- somewhat inflammatory statements made by Mr. Wright in his affidavit without giving Mrs. Wright an opportunity to contest those seems to be inappropriate. That's not the way our system of justice works.

She is entitled to an opportunity to be heard, and that's what we're asking for here. All of the things that counsel has said may be true, and maybe you can award her -- award appropriate sanctions accordingly when and if that is appropriately before the Court.

The thing that is before the Court right now is the question whether, I think, and I think this is the way you should look at it, Your Honor, is whether if this motion that was filed back in early April, you -- whether you would have granted the sanctions that were requested in that motion if Mrs. Wright had appropriately responded to that motion.

Because if she had appropriately responded to that motion and you would still grant the sanction, then I suppose it doesn't matter too much her excuse as to why she didn't respond to the motion. But I think that's the first question that

you have to ask yourself.

If you decide, no, I would have at least entered an order compelling discovery, compelling responses to discovery, and then if Ms. Tisdell had continued to refuse to respond to that then I would have ordered -- imposed the ultimate sanction as it resulted here, then I think you have got to say that it's probably excusable neglect on her part. There's some -- (inaudible) -- evidence that's excusable neglect on her part for not hiring an attorney.

When you are a litigant and somebody is prosecuting a case, which is the case here, we have a petition to modify the decree of divorce that has been filed by the petitioner, he's prosecuting that case, and if all of a sudden that stops, you get a notice in January to appoint successor counsel but then nothing happens, it seems appropriate to me that you can make a reasonable assumption that this party has decided not to pursue it.

Then when you get something in April she immediately takes action to get counsel. And I would submit that she took reasonable action to obtain counsel to attempt to contest this motion. Unfortunately, she was not successful in doing that

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before you entered your order.

And I think it's extremely harsh at this stage, without hearing evidence, to impose upon her the sanction that has been incurred here without giving her an opportunity to be heard. The presumption is that we give litigants an opportunity to have their day in court unless there's some really good reason why they shouldn't, and I don't believe we have got a good enough reason in this case, Your Honor.

THE COURT: Thank you, counsel. The Court is focusing its attention on the affidavit of Paula Tisdell. The affidavit was filed on the Court on May the 6th of 1996. The affidavit cites the fact pattern generally set forth in the memorandum and arguments of counsel.

I am puzzled by paragraphs 4, 5 and 6 for the reason that it appears to not be a reasonable reaction to what is going on. Paragraph 4 states, Sometime after October 19, 1995, my counsel mailed to me defendant's first set of discovery requests to plaintiff, Paula Jean Wright. I also received a copy of plaintiff's first set of interrogatories and requests for production of document that were served by counsel on the defendant on or about October 30th

of 1995.

Both of those documents submitted pursuant to the Rules of Civil Procedure have time deadlines on them. The possession of a set of interrogatories, even to a person who is not learned in the practice of law, is on the very face of it an alert that a clock is running.

MR. HOLM: Your Honor, I hate to interrupt --

MR. BISHOP: We're through. The Court is ruling.

MR. HOLM: Well, I don't know if you understood that those -- those are two sets from both sides.

THE COURT: I understand.

MR. HOLM: Okay.

THE COURT: They're cross --

MR. HOLM: Cross, okay.

THE COURT: They're cross discovery, and I clearly understand that, counsel. And you quoted that in your argument --

MR. HOLM: Okay.

THE COURT: -- and the affidavit supports that. And the arguments of counsel support that, as well, and the filings.

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After receiving copies of those documents, I did not hear anything further from my counsel. And I think I'd really have to look at that period because the rest of it after that is based strictly on hearsay.

Based on information I obtained from others, the defendant was having difficulty in his current marriage, I believed that the matter had been dropped. Well, an official court pleading that has a 30-day deadline on it and a clock running does not give a rational basis for believing that anything has been dropped.

Then paragraph 5 simply states, In late January, '80 -- '96, I received a notice of withdrawal from Mr. Park, and shortly, thereafter, received a notice to appoint counsel or represent self. Again, no indication of any action taken by this individual even though the notice to appoint counsel again starts a clock running and says on its face to appoint counsel.

Then paragraph 6, again, nothing occurred in the case until early April, 1996, when I received defendant's motion to strike answer to petition to modify decree of divorce and for judgment. Now, that motion was very specific, but also were the

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previous pleadings. There was a response to that motion but nothing to the prior. Not to the discovery, not to the withdrawal and notice to appoint.

The affiant only claims that she responded after the file notification that judgment was being sought from the Court. The affidavit of Ms. Tisdell also indicates that there had been no visitation for a period of one year. It is not an inappropriate sanction. The motion is overruled and denied. If you'll prepare the appropriate order to that effect, Mr. Bishop.

MR. BISHOP: I will.

(Thereupon, the hearing was concluded.)

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CERTIFICATE OF NOTARY

STATE OF UTAH)
) ss
COUNTY OF WASHINGTON)

I, J. Elizabeth Van Fleet, a duly commissioned Notary Public, Washington County, State of Utah, do hereby certify:

That I reported stenographically the foregoing video tape at the time and place hereinbefore set forth.

That thereafter said shorthand notes were transcribed into typewriting and that the typewritten transcript of said video tape is a complete, true and accurate transcription of my said shorthand notes taken down at said time, to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal of office in the County of Washington, State of Utah, this 15th day of July, 1996.

NOTARY PUBLIC
J. ELIZABETH VAN FLEET
325 South 200 East #15
St George, UT 84770
My Commission Expires
December 20th, 1997
STATE OF UTAH

J. Elizabeth Van Fleet

J. Elizabeth Van Fleet, RPR, CSR

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WILLARD R. BISHOP, P. C.
Willard R. Bishop - #0344
Attorney for Defendant
P. O. Box 279
Cedar City, UT 84721-0279
Telephone: (801) 586-9483

IN THE FIFTH JUDICIAL DISTRICT COURT OF WASHINGTON COUNTY

STATE OF UTAH

PAULA JEAN WRIGHT, and the STATE OF UTAH, by and through Utah State Department of Social Services, Plaintiffs, vs. JOHNNY FRANK WRIGHT, Defendant.	**AFFIDAVIT OF JOHNNY FRANK WRIGHT** Case No. 904500236DA Honorable James L. Shumate

STATE OF UTAH)
:ss.
County of Iron)

COMES NOW AFFIANT, who being duly sworn, deposes and states as follows:

1. Affiant is Defendant in this matter.

2. In or about August of 1995, Affiant filed his "Petition to Modify Decree of Divorce".

3. In September of 1995, Plaintiff Paula Jean Wright, acting through her then-attorney, Mr. Michael W. Park, filed a document entitled "Answer to Petition to Modify

Decree of Divorce", in which Plaintiff denied certain factual allegations made by Affiant. In addition, Plaintiff's attorney filed a "Counter-Petition" seeking increased child support, and an award of attorney fees.

4. On or about October 19, 1995, in an effort to attempt to determine the factual basis behind Plaintiff's "Answer to Petition to Modify Decree of Divorce" and Plaintiff's "Counter-Petition", Affiant propounded "Defendant's First Set of Discovery Requests to Plaintiff Paula Jean Wright". At the same time this affidavit is filed, the original of "Defendant's First Set of Discovery Requests to Plaintiff Paula Jean Wright" will be sent to the Clerk for filing, for use in connection with various motions and other matters before the Court.

5. On or about October 18, 1995, Affiant's attorney wrote to Plaintiff's attorney, and requested Plaintiff's attorney to check his schedule to determine when it might be appropriate to take the deposition of Plaintiff Paula Jean Wright. A copy of Affiant's attorney's letter of October 18, 1995, to Mr. Park is attached and is incorporated by this reference.

6. On or about October 31, 1995, Affiant's attorney received from Mr. Michael W. Park, a letter inquiring as to whether Mr. Bishop wanted to take Paula Jean Wright's deposition prior to the time she responded to the discovery which had been propounded. A copy of Mr. Park's letter to Mr. Bishop is attached, and is incorporated

by this reference. It shows that Plaintiff clearly knew of her obligation to respond to the discovery which had been propounded to her.

7. On or about November 21, 1995, Affiant's attorney wrote to Mr. Park. A copy of the letter of November 21, 1995, is attached and is incorporated by this reference. In that letter, Mr. Bishop informed Mr. Park that he did not want to take the deposition of Plaintiff until such time as Plaintiff responded to the written discovery requests.

8. On January 24, 1996, when no response to the written discovery propounded by Affiant to Plaintiff had been received, Affiant's attorney again wrote to Mr. Park. A copy of Mr. Bishop's letter to Mr. Park of January 24, 1996, is attached and is incorporated by this reference. In that letter, Mr. Bishop requested that Mr. Park take steps to get the discovery responses completed. At the same time, Affiant requested that Mr. Park contact Plaintiff Paula Jean Wright and make arrangements for Affiant to visit with his child, not having had that opportunity for some months.

9. Mr. Park's response appeared to be that he withdrew from the case, for reasons unknown to Affiant.

10. The failure of Plaintiff to respond to discovery has impeded the judicial process, and has frustrated it, in that it has made it impossible for Affiant and his attorney to determine the factual basis, if any, behind the allegations made by Plaintiff.

11. Affiant believes, and therefore asserts, that Plaintiff's pleadings should be stricken from the files and records of this case, and that he should be awarded judgment as prayed in his Petition to Modify Decree of Divorce.

DATED this 29 day of MARCH, 1996.

JOHNNY FRANK WRIGHT

SUBSCRIBED AND SWORN TO before me this 29th day of March, 1996.

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
November 17, 1999
ETTA L. MASAWYTEWA
Cedar City, Utah 84720

NOTARY PUBLIC
My commission expires: NOV. 17, 1999
Residing in: IRON COUNTY, UTAH

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a full, true, and correct copy of the within and foregoing document to Mr. Paul F. Graf, Esq., Assistant Attorney General, Utah Department of Human Services, 168 North 100 East, St. George, Utah 84770; and to Ms. Paula J. Wright, at 386 East Woodlake Cove, #201, Murray, Utah 84107, by first-class mail, postage fully prepaid this 29th day of March, 1996.

Secretary

0026 208

WILLARD R. BISHOP, P.C.
A Utah Professional Corporation
ATTORNEYS At Law
36 NORTH 300 WEST
P.O. BOX 279
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801/586-9483

WILLARD R. BISHOP

WILLIAM H. LEIGH
OF COUNSEL

October 18, 1995

Mr. Michael W. Park, Esq.
THE PARK FIRM, P.C.
Attorneys at Law
P. O. Box 2438
St. George, UT 84771-2438

RE: ***Wright and State of Utah v. Wright;***
Washington County Case No. 904500236DA;
My File No. WB92243

Dear Mike:

The purpose of this note is simply to request that you check your schedule and let me know when it might be convenient for me to take the deposition of Paula Jean Wright. If she now resides in St. George, I suppose we should take her deposition in your office. If she does not reside in St. George, but somewhere else other than St. George, I propose that we take her deposition in my office.

I enclose a stamped, self-addressed envelope for your reply.

We should also consider a home study and custody evaluation. Do you have anyone whom you would approve as a custody evaluator?

Very cordially yours,

WILLARD R. BISHOP, P. C.

Willard R. Bishop

WRB:em

Enclosures

pc Mr. Johnny F. Wright

Michael W. Park
283 W. Hilton Dr., Suite 4
P.O. Box 2438
St. George, Ut 84771
Tel. (801) 673-8689
Fax 673-8767

THE PARK FIRM
Attorneys and Counselors at Law
Michael W. Park
James M. Park

James M. Park
965 S. Main, Suite 3
P.O. Box 765
Cedar City, Ut 84720
Tel. (801) 586-6532
Fax 586-3679

October 25, 1995

Willard R. Bishop
P.O. Box 279
Cedar City, UT 84721

Dear Will:

Please advise me if you want to take deposition of Paula Jean Wright prior to the time she answers the discovery. At the time of depositions, we will probably want to take the deposition of Mr. Wright.

Sincerely Yours,

Michael W. Park
MWP/dd

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WILLARD R. BISHOP

WILLIAM H. LEIGH
OF COUNSEL

November 21, 1995

Mr. Michael W. Park, Esq.
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P. O. Box 2438
St. George, UT 84721-2438

RE: ***Wright/Utah Dept. of Human Services v. Wright; Washington County Civil No. 954500384DA; My File No. WB92243***

Dear Mike:

Thank you for your letter of October 25, 1995, which arrived in my office on October 31, 1995.

I do not desire to take the deposition of Paula Jean Wright until such time as she responds to the written discovery requests.

I acknowledge receipt of your "Plaintiff's First Set of Interrogatories and Requests for Production of Documents" on November 2, 1995. On the date this letter bears, a little belatedly, I sent them on to Mr. Johnny Frank Wright for his response.

Very cordially yours,

WILLARD R. BISHOP, P. C.

Willard R. Bishop

WRB:em

pc Mr. Johnny F. Wright

FLOYD W HOLM (1522)
965 South Main, Suite 3
P.O. Box 765
Cedar City, UT 84720
Telephone: (801) 586-6532

IN THE FIFTH JUDICIAL DISTRICT COURT OF WASHINGTON COUNTY

STATE OF UTAH

PAULA JEAN WRIGHT, and the STATE OF UTAH, by and through Utah State Department of Social Services, Plaintiff, vs. JOHNNY FRANK WRIGHT, Defendant.	**AFFIDAVIT OF PAULA J. TISDALE** Civil No. 904500236 Judge James L. Shumate

STATE OF UTAH)
ss.
COUNTY OF UTAH)

I, Paula J. Tisdale being first duly sworn upon oath, depose and say as follows:

1. I am the Plaintiff in the above-entitled action and have personal knowledge regarding the facts stated herein.

2. In or about August, 1995 I was served with the pending Petition to Modify Decree

of Divorce.

3. I immediately obtained counsel to represent me, Mr. Michael W. Park, and filed an Answer to the Petition and a Counter Petition on or about September 15, 1995.

4. Sometime after October 19, 1995, my counsel mailed to me, Defendant's First Set of Discovery Request to Plaintiff, Paula Jean Wright. Also, I received a copy of Plaintiff's First Set of Interrogatories and Request for Production of Documents that were served by counsel on Defendant on or about October 30, 1995. After receiving copies of those documents I did not hear anything further from my counsel and, based on information I obtained from others that Defendant was having difficulty in his current marriage, I believed that the matter had been dropped.

5. In late January, 1996, I received a Notice of Withdrawal of Counsel from Mr. Park and shortly thereafter received a Notice to Appoint Counsel or to Represent Self.

6. Again, nothing occurred in the case until early April, 1996 when I received Defendant's Motion to Strike "Answer to Petition to Modify Decree of Divorce", and for Judgment.

7. Immediately upon receipt of the aforesaid Motion, I again contacted Mr. Park to see if I could again obtain his assistance in the case. When I finally spoke to Mr. Park, he advised me that he would require a retainer that I was unable to pay in order to re-enter his appearance in the case and, suggested that I contact Utah Legal Services Corporation.

8. I contacted Legal Services Corporation in Salt Lake City and after contacting them was advised that since the case was pending in Washington County I should contact the Cedar City Office of Legal Services.

9. I finally contacted the Cedar City office of Legal Services in mid April and on or about April 24, 1996 received a letter, dated April 18, 1996 from Utah Legal Services, advising me that, although I was financially eligible for Legal Services, it could not handle my case. I then immediately contacted Mr. Floyd W Holm who has now agreed to represent me.

10. By the time Mr. Holm was able to review the case, this Court had already granted the aforesaid motion and entered Judgment against me.

11. The subject minor child is presently 6½ years of age and is enrolled in public school, Kindergarten. She last had visitation with her father approximately one (1) year ago. I believe it would be very traumatic if my daughter were removed from school and placed in the custody of Defendant while my Motion to for Relief from Order and Judgment is pending.

DATED this 2 day of May, 1996.

Paula J. Tisdell

PAULA J. ~~TISDALE~~ TISDELL

SUBSCRIBED and SWORN to before me this 2 day of May, 1996.

Christine L Salmon

NOTARY PUBLIC
Residing at: UTAH
My Commission Expires: Jan, 8, 2000

CHRISTINE L SALMON
Notary Public
State of Utah
My Comm. Expires Jan 8, 2000
9 N University Ave Provo UT 84601

WILLARD R. BISHOP. P.C.
A Utah Professional Corporation
ATTORNEYS At Law
36 NORTH 300 WEST
P.O. BOX 279
CEDAR CITY, UTAH 84721
801/586-9483

WILLARD R. BISHOP

WILLIAM H. LEIGH
OF COUNSEL

November 21, 1995

Mr. Michael W. Park, Esq.
THE PARK FIRM
Attorneys at Law
P. O. Box 2438
St. George, UT 84721-2438

RE: ***Wright/Utah Dept. of Human Services v. Wright; Washington County Civil No. 954500384DA; My File No. WB92243***

Dear Mike:

Thank you for your letter of October 25, 1995, which arrived in my office on October 31, 1995.

I do not desire to take the deposition of Paula Jean Wright until such time as she responds to the written discovery requests.

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Very cordially yours,

WILLARD R. BISHOP, P. C.

Willard R. Bishop

WRB:em

pc Mr. Johnny F. Wright

211

WILLARD R. BISHOP. P.C.
A Utah Professional Corporation
ATTORNEYS At Law
36 NORTH 300 WEST
P.O. BOX 279
CEDAR CITY, UTAH 84721
801/586-9483

WILLARD R. BISHOP

WILLIAM H. LEIGH
OF COUNSEL

January 24, 1996

Mr. Michael W. Park, Esq.
THE PARK FIRM, P. C.
Attorneys at Law
P. O. Box 2438
St. George, UT 84771-2438

RE: Wright and State of Utah v. Wright; Washington County Civil No. 900500126; My File No. WB92243

Dear Mike:

In checking the file recently, I note that Mrs. Wright has not responded to the discovery I propounded last October. Please take steps to encourage her to get that done.

Mr. Wright has been working on his responses to discovery. I have them just about completed, but would certainly feel better about sending them to you if I have hers first.

Mr. Wright has not seen his child for approximately nine months, since May of 1995. I really do need to set up some type of visitation for him. If we cannot do this, of course, then we need to to go further.

I look forward to your response.

Very cordially yours,

WILLARD R. BISHOP, P. C.

Willard R. Bishop

WRB:cm

pc Mr. Johnny F. Wright

WILLARD R. BISHOP, P.C.
Willard R. Bishop - #0344
William H. Leigh - #5307
Attorney for Defendant
P.O. Box 279
Cedar City, UT 84720-0279
Telephone: (801) 586-9483

IN THE FIFTH JUDICIAL DISTRICT COURT OF WASHINGTON COUNTY

STATE OF UTAH

PAULA JEAN WRIGHT, and the STATE OF UTAH, by and through Utah State Department of Social Services, Plaintiff, vs. JOHNNY FRANK WRIGHT, Defendant.	**AFFIDAVIT OF JOHNNY FRANK WRIGHT IN SUPPORT OF "OBJECTION TO PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT AND MOTION FOR STAY"** Civil No. 904500236 Honorable James L. Shumate

STATE OF UTAH)
: ss.
County of Iron)

Johnny Frank Wright being first duly sworn upon oath, deposes and says that:

1. Affiant is the Defendant in the above-entitled matter and has personal knowledge regarding the facts set forth herein.

2. Plaintiff has a history of violating orders of this Court with respect to the minor child. With regard to this Court's First Modification of the Decree, partial grounds for the modification as set forth in the Findings of Fact and Conclusions of Law, is that

Plaintiff, Paula Jean Wright, refused to let Affiant visit with Brandi Jean Wright, his daughter, except in her home, under supervision. That requirement instituted by Plaintiff, Paula Jean Wright, is not in accordance with the visitation order that was in effect at the time. Also, the current order regarding visitation gives Defendant liberal visitation, yet Plaintiff has denied Defendant visitation since May 23, 1995. Further, Plaintiff being fully aware that Defendant had been awarded custody of the minor child, absconded with the child to avoid having to comply with the April 23, 1996 order granting Defendant custody.

3. Plaintiff fled her home in Salt Lake City, Utah to avoid having to comply with the Court's order regarding custody of the parties' minor child now being vested in Defendant. On April 30, 1996, Affiant with the assistance of Deputy Mitchell of the Salt Lake County Sheriff's Office went to the residence of Paula Jean Wright at 80 West 900 North #35 to take custody of the parties minor child, Brandi Jean Wright. Plaintiff nor the child were at the home. However, Bryan Magann, the apparent boy fried of Paula Jean Wright was at the Plaintiff's apartment. Mr. Magann informed Affiant and Officer Mitchell that Plaintiff, Paula Jean Wright, had stated to him that very morning that she had received a copy of the order changing custody to Mr. Wright and that she was going to leave. Mr. Magann thought she probably would run to Provo, Utah to a friend's house. See copy of Salt Lake County Sheriff's Office initial report of Deputy Mitchell attached hereto and incorporated herein by reference.

4. On January 24, 1996, when no response to the written discovery propounded by Affiant to Plaintiff had been received, Affiant's attorney again wrote to Mr. park. A copy of Mr. Bishop's letter to Mr. Park of January 24, 1996, is attached and is incorporated by this reference. In that letter, Mr. Bishop requested that Mr. Park take steps to get the discovery response completed. He also informed Mr. park that he did not want to provide a response to Plaintiff's discovery requests until Plaintiff had responded to Defendant's discovery requests. That Defendant's responses were "just about completed".

6. Defendant's "Response to Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant" for some time have been placed with Defendant's attorney, fully completed. The response was not served upon Plaintiff because Plaintiff had failed to respond to Defendant's discovery request which was submitted to Plaintiff prior to her serving on Defendant her set of discovery requests.

7. Affiant is not having "difficulty" in his marriage as Plaintiff so audaciously stated in her Affidavit.

8. Since Plaintiff had absconded with the child, Defendant hired a Private Detective to locate mother and child. The Private Detective located the mother and child in Provo, Utah.

9. Over this past weekend, with the assistance of law enforcement officers, the parties' minor child, Brandi Jean Wright, was taken from her mother and placed in the custody of Affiant pursuant to this Court's order.

10. The said child has been enrolled in Kindergarten in the Iron County School District. Another change is not the child's best interests.

DATED this 6 day of May, 1996.

JOHNNY FRANK WRIGHT

SUBSCRIBED AND SWORN TO before me this 6th day of May, 1996.

NOTARY PUBLIC
My commission expires: NOV. 17, 1999
Residing in: IRON COUNTY, UT

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
November 17, 1999
ETTA L. MASAWYTEWA
185 West 835 South
Cedar City, Utah 84720

0038 300

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that I delivered a full, true, and correct copy of the within and foregoing document to the office of Mr. Floyd W. Holm, Esq., Attorney at Law, at 965 South Main, Suite 3, Cedar City, Utah this 7th day of May, 1996.

Kim Cunningham
Secretary

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a full, true, and correct copy of the within and foregoing document to Mr. Paul F. Graf, Esq., Assistant Attorney General, Utah Department of Human Services, Office of Recovery Services, at 168 North 100 East, St. George, Utah 84770, by first-class mail, postage fully prepaid this 7th day of May, 1996.

Heidi Stephenson
Secretary

SALT LAKE COUNTY SHERIFF'S OFFICE

■ INITIAL REPORT ☐ FOLLOW-UP

CASE NUMBER: 96-57990

Offense Classification & Type of Offense	Method:	Date of Occurrence: MM	DD	YY	Time of Occurrence:
PERSON / CUSTOD. INTERFER.		04	30	96	0900

Address of Occurrence	Name of Business, School, Organization	Phone Number
486 EAST WOOD COVE CIR #201		NONE

Susp.	Victim	Last Name:	First Name:	Middle Name:	D.O.B./Age	Race:	Sex:
X	X	JOHNNY	WRIGHT		02-14-65		

Address:	City:	State:	Zip Code:	Home Phone:	Business Phone:
80 WEST 900 NORTH #35	CEDER	UT	84720	586-6544	

SYNOPSIS: SUSPECT WAS MADE AWARE THAT COMPLAINANT HAD CUSTODY OF CHILD AND LEFT RESIDENCE TO AVOID HAVING TO COMPLY WITH THE COURT ORDER. UCA 76-5-303

SUSPECT: WRIGHT, PAULA DOB:UNKNOWN PHONE: UNKNOWN

ADDRESS: LAST KNOWN 486 EAST WOOD COVE CIR. #201

AKA: PAULA - WRIGHT, FARROW, SUNDRICK, TISDELL, MAGANN

CHILDS INFORATION: BRANDI WRIGHT 6 YEARS OLD

STRAWBERRY BLOND HAIR BLUE EYES AND SLENDER BUILD

LAST KNOWN ACCOMPANIED BY MOTHER - PAULA WRIGHT

WITNESS INFORMATION: MAGANN, BRYAN DOB: UNKNOWN PHONE: NONE

ADDRESS: 486 EAST WOOD COVE CIR. #201

WITNESSES STATEMENT: MR MAGANN STATED THAT HE WAS TALKING TO THE SUSPECT THE MORNING OF THE 30TH OF APRIL WHEN HE STATED THAT SHE TOLD HIM THAT SHE WAS GOING TO LEAVE. HE STATED THAT SHE DID RECEIVE A COPY OF THE ORDER STATING THAT MR WRIGHT HAD CUSTODY, AND IN MR MAGANN'S WORDS "SHE BECAME SCARED". HE STATED THAT HE FIGURED THAT SHE WOULD RUN, BUT DID NOT KNOW WHERE. HE STATED THAT SHE PROBABLY WOULD RUN TO PROVO TO A FRIENDS HOUSE.

PREMISES: RESIDENCE

NARRATIVE: I WAS INFORMED BY MR WRIGHT THAT HE HAD COSTODY OF THE ABOVE MENTIONED CHILD AND AN ORDER STATING THAT AN OFFICER IN SALT LAKE COUNTY WAS TO HELP IN THE RECOVERY OF THE ABOVE MENTIONED CHILD. I DID VARIFY THESE PAPERS. HE ALSO STATED THAT HE FOUND WHERE THE SUSPECT WAS LIVING. I WENT TO THAT ADDRESS AND FOUND MR. MAGANN AS DIRECTED BY MR WRIGHT. HE GAVE ME THE ABOVE STATEMENT AND STATED THAT HE HAD DROPPED THE SUSPECT OFF AT WORK THAT MORNING. I ASKED HIM THAT IF HE WERE TO CONTACT THE SUSPECT TO PLEASE CONTACT ME. ACCORDING TO UCA 76-5-303 CUSTODIAL INTERFERENCE I ASKED MR MAGANN TO WARN THE SUSPECT OF HER ACTIONS. NOTHING FURTHER AT THIS TIME.

CASE STATUS: ACTIVE FOLLOW UP TO BE DONE BY DEPUTY MITCHELL

CHARGES PENDING

Deputy Name:	I.D.#	Report Date: MM	DD	YY	Page
MITCHELL	524W	04	30	96	1 of 1

DISTRIBUTION			
Records	ED	Patrol	SDU
Media	Juvenile	Traffic	
CAU	Detective	Bike Room	

CASE STATUS			
Active	A	Inactive	
Cleared	C	Completed	
Unfounded		CRP	ARP

CASE

0010 302

WILLARD R. BISHOP. P.C.
A Utah Professional Corporation
ATTORNEYS AT LAW
36 NORTH 300 WEST
P.O. BOX 279
CEDAR CITY, UTAH 84721
801/586-9483

WILLARD R. BISHOP

WILLIAM H. LEIGH
OF COUNSEL

January 24, 1996

Mr. Michael W. Park, Esq.
THE PARK FIRM, P. C.
Attorneys at Law
P. O. Box 2438
St. George, UT 84771-2438

RE: ***Wright and State of Utah v. Wright***
Washington County Civil No. 964500126; My File No. WB9224

Dear Mike:

In checking the file recently, I note that Mrs. Wright has not responded to the discovery I propounded last October. Please take steps to encourage her to get that done.

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Mr. Wright has not seen his child for approximately nine months, since May of 1995. I really do need to set up some type of visitation for him. If we cannot do this, of course, then we need to to go further.

I look forward to your response.

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